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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

JUSTIN JOHNSON,  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiff,

vs.

THE IRVINE COMPANY, LLC;  
REALPAGE, INC.; GREYSTAR REAL  
ESTATE PARTNERS, LLC; LINCOLN  
PROPERTY CO.; FPI  
MANAGEMENT, INC.; MID-  
AMERICA APARTMENT  
COMMUNITIES, INC.; AVENUE5  
RESIDENTIAL, LLC; EQUITY  
RESIDENTIAL; ESSEX PROPERTY  
TRUST, INC; THRIVE  
COMMUNITIES MANAGEMENT,  
LLC; and SECURITY PROPERTIES  
INC.,

Defendants.

Case No.

**CLASS ACTION COMPLAINT  
FOR:**

**(1) RESTRAINT OF TRADE  
IN VIOLATION OF SECTION 1  
OF THE SHERMAN ACT**

**JURY TRIAL DEMANDED**

## NATURE OF THE ACTION

1  
2 1. Plaintiff Justin Johnson (“Plaintiff”) challenges a cartel among lessors  
3 of multifamily residential real estate leases (“Lessors”) to artificially inflate the  
4 prices of multifamily residential real estate in the United States above competitive  
5 levels.

6 2. Until approximately 2016, and potentially earlier, many of the nation’s  
7 largest Lessors priced their leases based upon their own assessments of how to best  
8 compete against other Lessors. Lessors generally priced their units competitively  
9 to maximize occupancy (that is, maximizing output). Lessors had an incentive to  
10 lower their prices to attract lessees away from their competitors, until all available  
11 leases were sold. In this way, competition drove rent levels to reflect available  
12 supply of rental units and lessee demand. Lessors also independently determined  
13 when to put their leases on the market, resulting in unpredictable supply levels—a  
14 natural phenomenon in a competitive market. When supply exceeded demand,  
15 Lessors cut prices.

16 3. As a former industry executive explained, the market structure is “a  
17 classic prisoners’ dilemma.” Since residential real estate is a perishable resource  
18 (if a unit sits vacant for a month, a Lessor can never monetize that lost month of  
19 rent), Lessors favored a strategy of keeping “heads in the beds,” a term for offering  
20 sufficiently attractive lease pricing to maximize physical occupancy levels in  
21 multifamily residential real estate properties. Thus, that industry executive opined,  
22 while all Lessors “would be better off limiting their rent reductions [discounts],” if  
23 any Lessor “lower[ed] their rents while the others don’t, then that [Lessor] would  
24 outperform.”

25 4. However, beginning in approximately 2016, and potentially earlier,  
26 Lessors replaced their independent pricing and supply decisions with collusion.  
27 Lessors agreed to use a common third party that collected real-time pricing and  
28 supply levels, and then used that data to make unit-specific pricing and supply

1 recommendations. Lessors also agreed to follow these recommendations, on the  
2 expectation that competing Lessors would do the same.

3 5. That third party is RealPage, Inc. (“RealPage”). RealPage provides  
4 software and data analytics to Lessors. RealPage also serves as the mechanism by  
5 which Lessors collude and avoid competition, increasing lease prices to Plaintiff  
6 and other members of the proposed Class. RealPage openly boasts that its services  
7 “balance supply and demand to maximize [Lessors’] revenue growth.” And that is  
8 precisely what RealPage has done, facilitating an agreement among participating  
9 Lessors not to compete on price, and allowing Lessors to coordinate both pricing  
10 and supply through two mutually reinforcing mechanisms in furtherance of their  
11 agreed aim of suppressing price competition for multifamily residential real estate  
12 leases.

13 6. First, Lessors “outsource daily pricing and ongoing revenue oversight”  
14 to RealPage, replacing separate centers of independent decision-making with one.  
15 RealPage collects up-to-the-minute data on the historical and contemporaneous  
16 pricing from participating Lessors, data that, according to RealPage, is updated  
17 “every time [Lessors] make or change a [lease] renewal offer,” spanning over “16  
18 million units,” which is a “very large chunk of the total inventory in the country.”  
19 It standardizes this data to account for differences in the characteristics or “class”  
20 of the property in question, and then sets prices for participating Lessors using a  
21 common formula. RealPage touts that it sets pricing for Lessors’ “properties as  
22 though we own them ourselves”—i.e., the participating Lessors’ cartel replicates  
23 the market outcomes one would observe if they were a monopolist of residential  
24 leases, which is the goal of any cartel.

25 7. While Lessors are able reject the RealPage pricing through an onerous  
26 process, RealPage emphasizes the need for “discipline” among participating  
27 Lessors. To encourage adherence to its common scheme, RealPage explains that  
28 for its services to be most effective in increasing rents, Lessors must accept the

1 pricing at least eighty percent of the time. These efforts are successful, with a  
2 RealPage employee explaining that as many as 90 percent (and at least 80 percent)  
3 of prices are adopted by participating Lessors without any deviation. As one Lessor  
4 explains, while “we are all technically competitors,” RealPage “helps us work  
5 together,” “to work with a community in pricing strategies, not to work separately.”

6 8. Second, RealPage allows participating Lessors to coordinate supply  
7 levels to avoid price competition. In a competitive market, there are periods where  
8 supply exceeds demand, and that in turn puts downward pressure on market prices  
9 as firms compete to attract lessees. To avoid the consequences of lawful  
10 competition, RealPage provides Lessors with information sufficient to “stagger”  
11 lease renewals to avoid oversupply. Lessors thus held vacant rental units  
12 unoccupied for periods of time (rejecting the historical adage to keep the “heads in  
13 the beds”) to ensure that, collectively, there is not one period in which the market  
14 faces an oversupply of residential real estate properties for lease, keeping prices  
15 higher.

16 9. By staggering lease renewals to artificially smooth out natural  
17 imbalances of supply and demand, RealPage and participating Lessors also  
18 eliminate any incentive to undercut or cheat on the cartel (avoiding a race to the  
19 bottom, or “prisoner’s dilemma”). This is a central mantra of RealPage, to sacrifice  
20 “physical” occupancy (i.e., to decrease output) in exchange for “economic”  
21 occupancy, a manufactured term RealPage uses to refer to increasing prices and  
22 decreasing occupancy (output) in the market.

23 10. RealPage’s and participating Lessors’ coordinated efforts have been  
24 effective at driving anticompetitive outcomes: higher prices and lower occupancy  
25 (output). RealPage brags that participating Lessors experience “[r]ental rate  
26 improvements, year over year, between 5% and 12% in every market.” One Lessor  
27 said that the net effect of raising rents and “pushing people out” of the residential  
28 real estate leases they could no longer afford, was “10 million in income.” As

1 discussed below, RealPage and participating Lessors have accomplished this task  
2 even under market downturns such as the Covid-19 pandemic.

3 11. RealPage is proud of its role in the exploding increase in the prices of  
4 residential leases. In a marketing video used to attract additional Lessors to the  
5 conspiracy, a RealPage Vice President discussed the recent and never-before seen  
6 price increases for residential real estate leases, as high as 14.5% in some markets.  
7 When another RealPage executive asks: “What role has the [RealPage] software  
8 played” in those increases, the RealPage Vice President responded: “I think it’s  
9 driving it, quite honestly.”

10 12. The conspiracy Plaintiff challenges is unlawful under Section 1 of the  
11 Sherman Act. Plaintiff brings this action to recover their damages, trebled, as well  
12 as injunctive and other appropriate relief, detailed infra, on behalf of all others  
13 similarly situated.

#### 14 **PARTIES AND UNNAMED CO-CONSPIRATORS**

15 13. Plaintiff Justin Johnson is a citizen and resident of the State of  
16 California. Mr. Johnson has rented a multifamily residential unit in a property now  
17 managed by Lessor Defendant Greystar Real Estate Partners, LLC (“Greystar”) in  
18 Oceanside, California beginning in 2014. His current lease runs from November  
19 2022 through November 2023 in a property managed by Greystar.

20 14. Lessor The Irvine Company, LLC (“Irvine”) is a Delaware limited  
21 liability corporation headquartered in Newport Beach, California. Irvine is the  
22 twenty-third largest manager of multifamily real estate in the United States, with  
23 over 63,000 units under management in five states. On information and belief,  
24 Irvine earns millions of dollars per year in revenue and employs over 1,000 people.

25 15. Defendant RealPage, Inc. is a Delaware corporation headquartered in  
26 Richardson, Texas. RealPage was a public company from 2010 until December  
27 2020, when it was purchased by private equity firm Thoma Bravo in a transaction  
28 that valued RealPage at approximately \$10.2 billion. RealPage provides software

1 and services to the residential real estate industry, including the RMS described  
2 herein. RealPage has thousands of employees and earns over a billion dollars per  
3 year in revenue. As of December 31, 2019, RealPage had over 29,800 clients,  
4 including each of the ten largest multifamily property management companies in  
5 the U.S.

6 16. Lessor Defendant Greystar Real Estate Partners, LLC (“Greystar”) is a  
7 Delaware limited liability corporation headquartered in Charleston, South Carolina.  
8 It is the largest manager of multifamily rental real estate in the United States, with  
9 more than 782,900 multifamily units and student beds under management  
10 nationally. On information and belief, Greystar earns billions of dollars per year in  
11 revenue, controls \$35.5 billion dollars in assets, and employs over 20,000 people.

12 17. Lessor Defendant Lincoln Property Co. (“Lincoln”) is a Texas  
13 corporation headquartered in Dallas, Texas. Lincoln is the second largest manager  
14 of multifamily rental real estate in the United States, with over 210,000 multifamily  
15 units under management nationally. On information and belief, Lincoln earns  
16 billions of dollars per year in revenue and employs thousands of people.

17 18. Lessor Defendant FPI Management, Inc. (“FPI”) is a California  
18 corporation headquartered in Folsom, California. FPI is the fifth largest manager  
19 of multifamily rental real estate in the United States, with over 150,000 multifamily  
20 units under management in 17 states. On information and belief, FPI earns billions  
21 of dollars per year in revenue and employs thousands of people.

22 19. Lessor Defendant Mid-America Apartment Communities, Inc.  
23 (“MAA”) is a Tennessee corporation headquartered in Germantown, Tennessee.  
24 MAA is the tenth largest manager of multifamily rental real estate in the United  
25 States, with over 100,000 multifamily units under management in 16 states. On  
26 information and belief, MAA earns over one billion dollars per year in revenue and  
27 employs over 2,400 people.  
28

1        20. Lessor Defendant Avenue5 Residential, LLC (“Avenue5”) is a  
2 Delaware limited liability company headquartered in Seattle, Washington.  
3 Avenue5 is the twelfth largest manager of multifamily rental real estate in the  
4 United States, with over 96,900 multifamily units under management in 12 states.  
5 On information and belief, Avenue5 earns over \$500 million dollars per year in  
6 revenue and employs over one thousand people.

7        21. Lessor Defendant Equity Residential (“Equity”) is a Maryland real  
8 estate investment trust headquartered in Chicago, Illinois. Equity is the sixteenth  
9 largest manager of multifamily rental real estate in the United States, with over  
10 80,000 units under management in eight states. On information and belief, Equity  
11 earns over 2 billion dollars per year in revenue and employs over 2,000 people.

12        22. Lessor Defendant Essex Property Trust, Inc (“Essex”) is a Maryland  
13 corporation headquartered in San Mateo, California. Essex is the twenty-fourth  
14 largest manager of multifamily rental real estate in the United States, with over  
15 61,000 units under management in California and Washington. On information and  
16 belief, Essex earns over 1.4 billion dollars per year in revenue and employs over  
17 1,700 people.

18        23. Lessor Defendant Thrive Communities Management, LLC (“Thrive”) is  
19 a Washington Limited Liability Company headquartered in Seattle, Washington.  
20 Thrive has over 18,000 units under management in the greater Pacific Northwest.  
21 On information and belief, Thrive earns millions of dollars per year in revenue and  
22 employs over 500 people.

23        24. Lessor Defendant Security Properties Inc. (“Security Properties”) is a  
24 Washington corporation headquartered in Seattle, Washington. Security Properties  
25 has over 22,000 units under management in eighteen states. On information and  
26 belief, Security Properties earns millions of dollars per year in revenue.

27        25. The Lessor Co-Conspirators are various persons and entities, including  
28 Lessors, known and unknown to Plaintiff and not named as defendants in this



1 action, who have participated as co-conspirators with RealPage and the Lessor  
2 Defendants in the offenses alleged and have performed acts and made statements in  
3 furtherance of the conspiracy.

#### 4 **JURISDICTION AND VENUE**

5 26. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331  
6 and 1337, as this action arises out of Section 1 of the Sherman Antitrust Act (15  
7 U.S.C. § 1) and Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15  
8 and 26).

9 27. This Court has personal jurisdiction over Defendants under Section 12  
10 of the Clayton Act (15 U.S.C. § 22), Federal Rule of Civil Procedure 4(h)(1)(A),  
11 and California's long-arm statute, Cal. Code Civ. Proc. § 410.10.

12 28. Defendants, directly or through their divisions, subsidiaries,  
13 predecessors, agents, or affiliates, may be found in and transact business in the  
14 forum state, including the sale of multifamily residential real estate leases.

15 29. Defendants, directly or through their divisions, subsidiaries,  
16 predecessors, agents, or affiliates, engage in interstate commerce in the sale of  
17 multifamily residential real estate leases.

18 30. Venue is proper in this District pursuant to Section 12 of the Clayton  
19 Act (15 U.S.C. § 22) and the federal venue statute (28 U.S.C. § 1391), because one  
20 or more Defendants maintain business facilities, have agents, transact business, and  
21 are otherwise found within this District and certain unlawful acts alleged herein  
22 were performed and had effects within this District.

#### 23 **FACTUAL BACKGROUND**

##### 24 **The Market for Multifamily Residential Real Estate Leases**

25 31. The relevant product market is the market for the lease of multifamily  
26 residential real estate and the relevant geographic market is the United States.

27 32. From the perspective of the consumer, multifamily rental apartment  
28 units are not an economic substitute for with apartments, condominiums, or homes



1 for purchase because, among other reasons, purchase of real estate requires the  
2 ability to make a substantial down payment and to obtain financing.

3 33. Additionally, from the perspective of the consumer, single-family real  
4 estate is not an economic substitute for multifamily residential real estate. For  
5 example, single-family properties typically do not offer amenities and security.  
6 Indeed, industry participants in the multifamily residential real estate market  
7 typically distinguish between multifamily and single-family real estate when  
8 discussing customer preferences and market trends, including concerning their  
9 disparate respective pricing.

10 34. The multifamily residential real estate lease market satisfies the test for  
11 market definition used by federal antitrust enforcement agencies, widely known as  
12 the “SSNIP test.” The test asks whether a hypothetical monopolist in a proffered  
13 market could profitably impose a small but significant (typically 5%), non-  
14 transitory increase in price (a “SSNIP”), without causing a sufficient number of  
15 customers to switch to other products or services such that the SSNIP would be  
16 unprofitable to the monopolist. If the SSNIP is profitable, the market is properly  
17 defined. If the SSNIP is not profitable, the market is too narrowly defined, and does  
18 not encompass sufficient economic substitutes.

19 35. Here, the SSNIP test is satisfied, and the market is properly defined. As  
20 described above and below, pursuant to the Lessors’ agreement not to compete on  
21 price, Lessors are able to increase “year over year, between 5% and 12% in every  
22 market,” yet those increases have not driven enough renters out of the market such  
23 that the SSNIP has become unprofitable to Lessors.

24 **Historical Pricing in the Market for Multifamily Residential Real Estate**  
25 **Leases**

26 36. Before RealPage facilitated collusion among Lessors, Lessors acting  
27 independently followed a policy to keep “heads in the beds.” In simplest terms,  
28 this meant the market was functioning competitively. Lessors, concerned that

every day a property remained unrented was a lost opportunity to earn revenue for that day, offered sufficiently attractive pricing to maintain maximum “physical occupancy” across their units. This could come in the form of reduced prices—often termed concessions—such as “first month free.”

37. The “heads in the beds” strategy also minimized turnover expenses, as there were hard costs associated with finding and evaluating a replacement tenant as well as lost revenue opportunities if the unit sat vacant between tenants.

38. One industry participant described the market before RealPage’s arrival, stating that a “generation” of Lessors “grew up worshipping the occupancy gods. We learned that if you were not 95 percent-plus occupied, the asset was failing.”

39. Lessors accomplished their goals of “worshipping the occupancy gods” and “keeping heads in the beds” through “manual pricing,” that is, uncoordinated, independent pricing. This led Lessors to maximize occupancy (output) by offering sufficiently low pricing to attract tenants to sign or renew existing leases. This is referred to as a market share over price strategy, and it is a common defining characteristic of a market that is functioning competitively.

#### **The Lessor Defendants’ Outsource Price and Supply Decisions to a Common Decision Maker—RealPage—Which Eliminated Competition**

40. Following RealPage’s entry, RealPage’s participating Lessors swiftly, and concertedly, shifted from the previous competitive market share over price strategy to a new collusive price over volume strategy. Price over volume is a hallmark of pricing in a cartelized market.

41. RealPage and participating Lessors have adopted a philosophy of economic occupancy, which is a term RealPage uses to refer to the practice of increasing prices notwithstanding market conditions and tolerating any reduced physical occupancy that might engender. Since Lessors of residential multifamily real estate properties (a finite resource) face a natural prisoner’s dilemma,

1 maximizing economic occupancy is only in a firm's economic self-interest if many  
2 Lessors collectively follow suit. As one industry executive explained, while all  
3 Lessors "would be better off limiting their rent reductions [discounts]," if any  
4 Lessor "lower[ed] their rents while the others don't, than that [Lessor] would  
5 outperform." The easiest way to solve the prisoner's dilemma, such that it would  
6 be profit maximizing to maintain high prices, would be if Lessors had mutual  
7 assurances that other Lessors would not compete with them on price.

8 42. RealPage and participating Lessors have provided one another with  
9 such mutual assurances, agreeing among themselves not to compete on price for  
10 the sale of multifamily residential real estate leases. They have effectuated their  
11 agreement through two mutually reinforcing mechanisms. First, participating  
12 Lessors have agreed to set prices using RealPage's coordinated algorithmic  
13 pricing. Second, participating Lessors have agreed to stagger their lease renewal  
14 dates through RealPage, to avoid (otherwise natural) oversupplies in rental  
15 properties.

16 43. RealPage's coordinated algorithmic pricing allows participating  
17 Lessors, in RealPage's words, to "outsource [their] daily pricing and ongoing  
18 revenue oversight" to RealPage, with RealPage pricing participating Lessors'  
19 "properties as if we [RealPage] own them ourselves"—that is, as if RealPage and  
20 its participating Lessors were operating as a monopolist.

21 44. Participating Lessors agree to adhere to RealPage's coordinated  
22 algorithmic pricing, often referring to such adherence as pricing "courage" or more  
23 frequently, pricing "discipline."

24 45. Participating Lessors also agree to provide RealPage with real-time  
25 access to their competitively sensitive and nonpublic data on their multifamily  
26 residential real estate leases.

27 46. This data, according to RealPage, spans over "16 million units," which  
28 is a "very large chunk of the total inventory in the country." RealPage standardizes

1 this data to account for differences in the characteristics or “class” of the property  
2 in question. RealPage then runs this massive dataset through its pricing algorithm,  
3 whereby RealPage sets prices for participating Lessors through application of a  
4 common formula to a common dataset.

5 47. Specifically, every morning, RealPage provides participating Lessors  
6 with recommended price levels. Lessors typically must communicate to a RealPage  
7 “Pricing Advisor” that they have “accept[ed]” or “confirm[ed]” the “approved  
8 pricing” within a specified time frame. If Lessors wish to diverge from the  
9 “approved pricing” they must submit reasoning for doing so and await approval.  
10 RealPage encourages participating Lessors to have daily calls between the Lessors’  
11 employees with pricing responsibility and the RealPage Pricing Advisor.

12 48. If there is a disagreement between the participating Lessor and the  
13 RealPage Pricing Advisor, the dispute is often elevated to the Lessor’s  
14 management for resolution, and specific reasons justifying a departure from  
15 RealPage’s pricing level are usually required. But RealPage emphasizes the need  
16 for discipline among participating Lessors and urges them that for its coordinated  
17 algorithmic pricing to be the most successful in increasing rents, participating  
18 Lessors must adopt RealPage’s pricing at least 80% of the time. As one example  
19 of such encouragement, Jeffrey Roper, RealPage’s main architect, publicly  
20 described the problem as: “If you have idiots undervaluing [setting prices  
21 independently], it costs the whole system.”

22 49. A RealPage employee reported that these instructions are successful,  
23 with as many as 90% (and at least 80%) of RealPage pricing being adopted. As  
24 one Lessor explained, RealPage’s coordinated algorithmic pricing required  
25 counterintuitive changes in their business practices “because[, upon adopting  
26 RealPage’s coordination of pricing,] we weren’t offering concessions nor were we  
27 able to negotiate pricing” like they previously had. That Lessor went on to explain  
28 that RealPage “maximize[s] rents but you have to be willing to strictly follow it,”

1 and, as a result, “we rarely make any overrides to the recommendations” provided  
2 by RealPage. Another Lessor described RealPage as bringing “discipline” and  
3 “courage to pricing.”

4 50. Using software it designed, applied to the dataset participating Lessors  
5 agreed to provide it, RealPage also allows participating Lessors to stagger their  
6 lease renewals to avoid natural periods of oversupply that would persist absent  
7 concerted action by would-be rival Lessors.

8 51. One Lessor explained that, using RealPage, Lessors are “now able to  
9 stagger lease expirations throughout the month, effectively cutting down on  
10 frictional vacancy loss as well as concessions” on price. That Lessor continued that  
11 by staggering lease renewals, Lessors have “leveled the lease expirations  
12 throughout the year to better match the historical demand for each community, thus  
13 positioning us [Lessors] for even higher rent growth.”

14 52. Lessors have publicly admitted that RealPage has allowed them to  
15 maintain higher prices in concert, with confidence that they can avoid price cutting  
16 and the prisoner’s dilemma.

17 53. This same Lessor commented that while “we [Lessors] are all  
18 technically competitors,” that Lessors’ common adoption of and adherence to  
19 RealPage’s software “helps us [Lessors] work together,” “to work with a  
20 community in pricing strategies, not to work separately.”

21 54. Other Lessors’ comments echo the potency and efficacy of their  
22 concerted action.

23 55. Another Lessor reported that RealPage “has given a substantial boost  
24 to economic occupancy” (the proportion of gross potential rent actually realized  
25 vs. physical occupancy, the proportion of units occupied by tenants), which is to  
26 say it caused higher prices and less output.

1        56. Another Lessor explained that by “outsourcing” pricing functions to  
 2        RealPage, prices are set by RealPage’s “multifamily experts,” “who essentially act  
 3        like an extension of our team.”

4        57. And another explained that in following the price over volume, or  
 5        economic capacity, strategy, they found “that driving our turnover rate up actually  
 6        captured additional revenue.” The Lessor continued: “The net effect of driving  
 7        revenue and pushing people out was \$10 million in income.” And the Lessor  
 8        concluded, “I think that shows that keeping the heads in the beds above all else is  
 9        not always the best strategy.” But given the prisoner’s dilemma faced by Lessors,  
 10        rejecting that competitive strategy is only in a Lessor’s economic self-interest if  
 11        they have assurances that they will not be significantly undercut by a rival.  
 12        RealPage provides a mechanism through which Lessors reach a common  
 13        understanding, coordinate their prices, and effectuate that understanding.

14        **The Lessor Defendants and RealPage Have Inflated the Prices and**  
 15        **Reduced the Occupancy (i.e., Output) of Residential Real Estate Leases**

16        58. As industry participants including RealPage’s own executives admit,  
 17        RealPage’s coordinated algorithmic pricing has caused anticompetitive effects in  
 18        the form of higher prices and reduced output, with a RealPage executive conceding:  
 19        “I think it’s [RealPage’s coordinated algorithmic pricing is] driving it [higher prices  
 20        for residential real estate leases], quite honestly.”

21        59. RealPage advertises that the Lessors that participate in this cartel  
 22        experience “[r]ental rate improvements, year over year, between 5% to 12% in  
 23        every market,” the ability to “outperform the market by up to 5%,” and “drive up to  
 24        an additional 150-200 basis points of hidden yield” that would not otherwise be  
 25        attainable to a Lessor utilizing independent pricing, rather than coordinated pricing.  
 26        RealPage refers to independent, competitive pricing as “manual pricing.” RealPage  
 27        claims to “outperform manual pricing” by 7 percent each year. That is, the Lessors’  
 28

1 collusion succeeds in increasing prices above competitive levels by 7 percent each  
2 year.

3 60. To conclude that these price increases would be economically irrational  
4 and against each Lessors' independent economic self-interest if acting alone (that  
5 is, absent assurances that other Lessors would also be exercising pricing  
6 "discipline"), or that price increases would be unachievable absent the  
7 implementation of coordinated algorithmic pricing by RealPage's participating  
8 Lessors, one need look no further than the admissions of RealPage and Lessors,  
9 who openly extol the value of cartelization (higher prices, lower output) to each  
10 other.

11 61. One Lessor's representative explained, "the beauty of using [RealPage's  
12 pricing] is that it pushes [Lessors] to go places that you wouldn't have gone on your  
13 own if you weren't using it."

14 62. Another Lessor's representative told panelists at an industry conference  
15 that it "raised rents hundreds of dollars," following RealPage's pricing, and noting  
16 that the Lessor would not have had "the courage to push [rents] as aggressively as  
17 [the RealPage pricing] program has."

18 63. Another Lessor admitted that, in the natural state of play, it simply is  
19 "not in [a Lessor's] DNA to raise pricing \$150 to \$200 per unit on a lease turn," but  
20 following RealPage's coordinated algorithmic pricing allowed the Lessor to do  
21 what, independently, it would not.

22 64. And yet another Lessor noted that, "[i]n our Florida markets, we let the  
23 system push as hard as it would go, and we saw increases as high as 20 percent. . .  
24 . Left to our own devices, I can assure you we would have never pushed rents that  
25 hard. That was a big number."

26 65. And still yet another Lessor observed that it was able to raise rents in  
27 situations where market conditions dictated otherwise, with a consultant for that  
28



1 Lessor conceding that “[i]f you’d listened to your gut, you would have lowered your  
2 price.”

3 66. RealPage itself concedes that these price levels could not be obtained  
4 independently, stating: “We believe in overseeing properties as though we own  
5 them ourselves. We believe we can deliver better results for you than you would  
6 otherwise be able to achieve.” In plain terms, RealPage concedes that its  
7 coordinated algorithmic pricing allows Lessors to obtain the same results as a single  
8 seller or monopolist—an outcome Lessors “would not otherwise be able to achieve”  
9 without RealPage’s pricing and assurances of Lessors’ discipline to that pricing.

10 67. The Covid-19 pandemic is a prime illustration of Lessors’ ability to  
11 coordinate pricing through RealPage and achieve market outcomes untethered to  
12 what one would expect if Lessors were acting independently of one another. A  
13 RealPage Vice President of Revenue Management explained that “at the start of  
14 Covid, I think a lot of our [Lessors’] initial reaction, was, ‘oh I need to start dropping  
15 rent, I need to start giving concessions” to account for the exodus of renters from  
16 major metropolitan areas. But “our [RealPage’s] advisory team and the product did  
17 a great job” of resisting that natural competitive outcome. Another RealPage  
18 employee agreed with that assessment, noting “we just saw unbelievable resilience  
19 and I would say discipline in pricing through the worst of the downturns . . . a lot  
20 of people thought we’d see severe rent cuts; that just didn’t happen.” That  
21 “resilience” and “discipline” is “unbelievable” precisely because absent assurances  
22 that competitor Lessors are not going to undercut a given Lessor on price, such  
23 discipline is against the Lessor’s individual economic self-interest.

24 68. RealPage has undertaken this conduct with full and complete knowledge  
25 of its illegality. One of RealPage’s pricing software’s main architects, Jeffery  
26 Roper, is acutely familiar with the anticompetitive nature of coordinated  
27 algorithmic pricing within an industry. Before pioneering RealPage’s software,  
28 Roper was Alaska Airlines’ Director of Revenue Management when it and other

airlines began using common software to share nonpublic planned routes and prices with each other, with the aim of heading off price wars. The Department of Justice’s Antitrust Division (“DOJ”) reached settlements or consent decrees for price fixing violations with eight airlines, including Alaska Airlines. Roper—who had his computer and documents seized by federal agents—relayed about that experience that, “We all got called up before the Department of Justice in the early 1980s because we were colluding.” He adds that at the time, “We had no idea” that conduct was unlawful. Having now brought analogous coordinated algorithmic pricing to multifamily residential real estate leasing after the DOJ’s airline settlements, however, Roper can no longer claim ignorance of the unlawful nature of this conduct.

**“Plus Factors” Render the Market for Multifamily Residential Real Estate Leases Susceptible to the Formation, Maintenance, and Efficacy of a Cartel**

69. The market for the sale of multifamily residential real estate leases from Lessors to lessees is characterized by numerous features, referred to as “plus factors,” that render the industry susceptible to collusion, such that the formation, maintenance, and efficacy of a cartel is more likely. These include (1) high barriers to entry, (2) high barriers to exit, (3) market concentration, (4) inelastic consumer demand, (5) relative fungibility of residential real estate leases, (6) exchanges of competitively sensitive information among horizontal competitors, and (7) numerous opportunities to collude at trade associations and RealPage functions.

70. First, multifamily residential real estate properties owners and operators face significant entry barriers. These include the high cost of acquiring property, establishing a property management infrastructure, and ongoing costs of building maintenance and regulatory compliance. Even small multifamily rental properties cost millions of dollars to acquire. Large properties, such as those operated by Greystar, run into the hundreds of millions of dollars to own and manage and take

1 several years and significant experience to build or acquire. Thus, new entrants into  
2 the residential real estate leasing market are unlikely to discipline cartel pricing.

3 71. Second, lessees of multifamily residential real estate properties face high  
4 exit barriers. Renters typically incur substantial cost and inconvenience when  
5 moving, and where price escalation is occurring in broad geographic areas, they  
6 might not have a lower priced option in reasonable proximity to where they  
7 currently live or work. As such, lessees cannot easily turn to alternative Lessors of  
8 multifamily residential real estate properties to discipline cartel pricing.

9 72. Third, the demand for multifamily residential real estate property leases  
10 is relatively inelastic. The only realistic alternative to renting is buying, and for most  
11 renters, that is not an option financially or logistically. Thus, no reasonable  
12 substitutes exist to discipline cartel pricing.

13 73. Fourth, the market for residential real estate property leases is highly  
14 concentrated. Most major metropolitan areas are denominated by relatively few  
15 sellers, with many large corporations like Greystar having substantial presences in  
16 metropolitan areas throughout the United States.

17 74. Fifth, multifamily residential real estate properties are relatively  
18 fungible, particularly within classes of properties. That is, when controlling for  
19 certain high-level characteristics of properties—such as the number of bedrooms  
20 and bathrooms, amenities, location, or the age of the building—properties within  
21 those classes are relatively fungible. Lessors have explained that RealPage’s pricing  
22 software “is correctly looking at ‘like’ competitor properties and ‘truly comparing  
23 apples to apples’ as it relates to competitor apartment pricing.”

24 75. Sixth, RealPage’s participating Lessors, directly and using RealPage as  
25 a conduit, share competitively sensitive information with one another. In addition  
26 to its price-setting and lease renewal-staggering services, RealPage collects non-  
27 public data on multifamily residential real estate properties and creates  
28 benchmarking reports that allow for quick comparisons of a Lessor’s performance

1 on occupancy and price for similar property classes vis-à-vis the industry. This  
2 function could not be recreated using any public, non-competitively sensitive  
3 sources as the advertised rates for residential real estate leases typically diverge  
4 from the actual rates.

5 76. Seventh, RealPage and participating Lessors have ample opportunities  
6 to collude.

7 77. As just one example, RealPage operates a private RealPage User Group  
8 Forum, an association of some thousand participating Lessors, which, according to  
9 RealPage, aims “to improve communications between RealPage and the user  
10 [Lessor] community,” while “promot[ing] communication between users  
11 [Lessors]” themselves. Within that Forum is an “Idea Exchange,” where Lessors  
12 submit their own recommendations for changes or improvements to RealPage’s  
13 offerings, as well as provide comments on proposed changes that RealPage is  
14 considering implementing to its software offerings.

15 78. As another example, RealPage organizes certain in-person events and  
16 collaboration among participating Lessors. It invites some to serve on a “Steering  
17 Committee,” which liaises with certain subcommittees of the RealPage User Group  
18 Forum to ascertain Lessors’ suggestions for RealPage’s software offerings and with  
19 the explicit instruction to consider “the mutual benefit of all users.” RealPage also  
20 organizes a marquee annual, multi-day event called “RealWorld,” where Lessors  
21 gather along with approved partners and executives from RealPage to network,  
22 exchange insights into key initiatives in the industry, and learn best practices for  
23 using RealPage tools. Over the past five years, those conferences have been held  
24 in Las Vegas, NV, Nashville, TN, Orlando, FL, and virtually during the Covid-19  
25 pandemic.

26 79. And RealPage has invited Lessors to attend periodic “summits” to  
27 discuss RealPage’s pricing software with RealPage and with one another, covering  
28 topics including (1) “Competitive Rent Analysis” or “[m]ethods of establishing and

1 maintaining amenity-based prices for each unit and floor plan, factoring in  
 2 comparable peer pricing,” (2) “Supply Forecasts” and “Demand Forecasts,” as well  
 3 as (3) RealPage’s “Pricing Engine,” or “[m]ethods to price units in real time based  
 4 on statistically validated price elasticity models.”

5 80. Finally, industry trade associations offer RealPage and participating  
 6 Lessors additional opportunities to conspire. As an illustrative example, the  
 7 National Multifamily Housing Council (“NMHC”), which advertises itself as “the  
 8 place where the leaders of the apartment industry come together to guide their future  
 9 success,” holds several events every year, including in person “Apartment Strategy  
 10 Conference,” an “Annual Meeting,” a “Fall Meeting,” hosted in cities including San  
 11 Diego, CA, Las Vegas, NV, and Washington, DC. NMHC counts among its  
 12 “Chair’s Circle Sponsors” RealPage, Greystar, and more participating Lessors. Of  
 13 note, NMHC “tracks market conditions through NMHC member surveys as well as  
 14 data from data provider partners,” to provide “industry benchmarks” on topics  
 15 including “In Place Rent Per Square Foot,” “Rent Change – New Leases,” and  
 16 “Rent Change – Renewals.”

### 17 **CLASS ACTION ALLEGATIONS**

18 81. Plaintiff brings this action on behalf of themselves and all others similarly  
 19 situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) as  
 20 representatives of the Class, which is defined as follows:

21 82. All persons and entities in the United States and its territories that are  
 22 direct purchasers of multifamily residential real estate leases from a Lessor  
 23 participating in RealPage’s pricing software and/or lease renewal staggering  
 24 software programs, or from a division, subsidiary, predecessor, agent, or affiliate of  
 25  
 26  
 27  
 28

1 such Lessor, at any time during the period of October 18, 2018 until the Defendants'  
2 unlawful conduct and its anticompetitive effects cease to persist.<sup>1</sup>

3 83. The Class is so numerous that joinder of all members in this action is  
4 impracticable. There are tens of thousands if not hundreds of thousands of members  
5 in the proposed Class.

6 84. Plaintiff's claims are typical of those of the Class.

7 85. Plaintiff and all members of the Class were all injured by the same  
8 unlawful conduct, which resulted in all of them paying more for multifamily  
9 residential leases than they otherwise would have in a competitive market.

10 86. Plaintiff will fairly and adequately protect and represent the interests of  
11 the Class. The interests of the Plaintiff are not antagonistic to the Class.

12 87. Questions of law and fact common to the members of the Class will  
13 predominate over questions, if any, that may be individual to individual class  
14 members, since the Defendants have acted and refused to act on grounds generally  
15 applicable to the Class.

16 88. Questions of law and fact common to the Class include:

17 a. Whether Defendants have entered into a formal or informal  
18 contract, combination, conspiracy, or common understanding to artificially  
19 inflate price and/or artificially suppress supply of multifamily residential real  
20 estate leases from competitive levels;

21 b. If Defendants entered into such a formal or informal contract,  
22 combination, conspiracy, or common understanding, whether that conduct  
23 violates Section 1 of the Sherman Act under the per se, quick look, or rule of  
reason modes of analysis;

24 c. If Defendants entered into such a formal or informal contract,  
25 combination, conspiracy, or common understanding, whether that conduct has  
26 in fact artificially inflated price and/or artificially suppressed supply of  
multifamily residential real estate leases from competitive levels;

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27 <sup>1</sup> Federal and state government entities are excluded from the Class.  
28

1 d. The proper measure of damages; and

2 e. The contours of appropriate injunctive relief to remediate the  
3 anticompetitive effects of the challenged conduct in the future.

4 89. Plaintiff is represented by counsel who are experienced and competent  
5 in the prosecution of complex antitrust and unfair competition class actions.

6 90. Class action treatment is the superior method for the fair and efficient  
7 adjudication of the controversy in that, among other things, such treatment will  
8 permit a large number of similarly situated persons or entities to prosecute their  
9 common claims in a single forum simultaneously, efficiently, and without the  
10 unnecessary duplication of effort and expense that numerous individual actions  
11 would engender. The benefits of proceeding through the class mechanism,  
12 including providing injured persons or entities with a method of obtaining redress  
13 for claims that might not be practicable for them to pursue individually,  
14 substantially outweigh any difficulties that may arise in the management of this  
15 class action.

## 16 **COUNT ONE**

### 17 **Agreement in Restraint of Trade in Violation of Section 1 of the Sherman** 18 **Act**

19 91. Plaintiff repeats and realleges all previous allegations as if fully set forth  
20 herein.

21 92. Defendants have formed a cartel to artificially inflate the price of and  
22 artificially decrease the supply and output of multifamily residential real estate  
23 leases from competitive levels.

24 93. The Defendants' cartel has caused the Class to suffer overcharge  
25 damages.

26 94. There are no procompetitive justifications for the Defendants' cartel,  
27 and any proffered justifications, to the extent legitimate, could be achieved through  
28 less restrictive means.



1           95. The Defendants' cartel is unlawful under a *per se* mode of analysis. In  
2 the alternative, the Defendants' cartel is unlawful under either a quick look or rule  
3 of reason mode of analysis.

4                                   **PETITION FOR RELIEF**

5           Plaintiff petitions for the following relief:

6           A. A determination that this action may be maintained as a class action  
7 pursuant to Federal Rule of Civil Procedure 23, that Plaintiff be appointed class  
8 representative, and that Plaintiff's counsel be appointed as class counsel.

9           B. A determination that the conduct set forth herein is unlawful under  
10 Section 1 of the Sherman Act under either a *per se*, quick look, or rule of reason mode  
11 of analysis.

12           C. A judgment enjoining Defendants from engaging in further unlawful  
13 conduct.

14           D. An award of attorneys' fees and costs.

15           E. An award of pre- and post-judgment interest on all amounts awarded;  
16 and

17           F. Such other relief as the Court deems just and equitable.

18                                   **REQUEST FOR A JURY TRIAL**

19           Plaintiff requests a trial by jury of all issues so triable.  
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1 Dated: November 21, 2022

Respectfully submitted,

2 s/ Rebecca A. Peterson

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20 *Attorneys for Plaintiff*

21 \*motion for admission *pro hac vice*  
22 forthcoming  
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